

Before Mr. Justice Mitter and Mr. Justice Grant.

1886
April 13.

ABIRUNNISSA KHIATOON (PETITIONER) *v.* KOMURUNNISSA KHIATOON
AND OTHERS (OPPOSITE PARTIES).^o

Appeal—Civil Procedure Code, ss. 32 and 588, cl. 2—Order rejecting application to be made a party.

An order rejecting an application under s. 32 of the Civil Procedure Code to be made a party to a suit is not appealable under cl. 2, s. 588.

ABIRUNNISSA KHIATOON made an application to the Subordinate Judge of Pubna that she might be added as a party to a suit pending in the Court. The petitioner represented that the subject-matter of the suit related to the estate of her deceased father, Fakrudin Ahmed, and she, being an heiress under the Mahomedan law, was a necessary party.

The Subordinate Judge passed the following order rejecting the application: "Unless I go into the merits of the case I cannot make the applicant a co-defendant against the will of the plaintiffs. As yet it does not clearly appear whether or not the petitioner is a necessary party in order to enable the Court to adjudicate more completely and effectually on the questions involved in this case."

The petitioner appealed to the High Court.

Mr. *Bonnaud* (with him Moulvie *Mohammed Yusuf*) for the appellants, referred to *Ghunrani v. Raj Coomar* (1). Although cl. 2, s. 588 mentions only the striking out or adding the name of a plaintiff or defendant, it has been held that an order made under s. 32 refusing to make an applicant a party to a suit is appealable.

Mr. *Bonnerjee* (with him Mr. *Gasper* and Mr. *O'Kinealy*) for the respondents, were not called upon.

The judgment of the Court (MITTER, and GRANT, JJ.) was delivered by

MITTER, J.—We are of opinion that there is no appeal in this case. All orders made under s. 32 of the Code of Civil

^o Appeal from Order No. 7 of 1886, against the order of Baboo Nilmani Das, Subordinate Judge of Pubna, dated the 5th of October 1885.

(1) All. W. Notes 55, Broughton's Notes of Cases, 624.

Procedure are not appealable by the 2nd clause of s. 588, but only orders striking out or adding the name of any person as plaintiff or defendant. As the order against which this appeal has been preferred does not come within the purview of this clause, we think there is no appeal. The appeal is rejected with costs.

K. M. C.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

SHARAT SUNDARI DABIA (DEFENDANT) v. BHOBO PERSHAD KHAN
CHOWDHURI (MINOR) BY HIS MOTHER RAM SUKHI DABIA
AND ANOTHER (PLAINTIFFS).*

1886
April 14.

Limitation Act, 1877, Art. 144—Ijardar, Dispossession of—Adverse possession—Zemindar, Suit by.

Possession taken by a trespasser during the currency of an *ijara* lease does not become adverse to the zemindar (lessor) until upon the expiration of the term, and a suit for possession may be brought within 12 years of that date under the provisions of Art. 144 of the Limitation Act.

Krishna Gobind Dhur v. Hari Churn Dhur (1) followed.

THIS suit which was one for recovery of possession of an 8 anna share of two mouzahs, was instituted on the 5th Aughran 1291 B.S. (19th November 1884). It was alleged that the plaintiff's predecessors in title had granted an *ijara* of the property to one Mr. Brodic, who remained in possession till 1285 B.S., (1878) the end of the term of his lease, and that ever since the month of Joisto 1286 B.S. (May—June 1879) the plaintiff had been wrongfully kept out of the land. The defendant, among other things, pleaded that she having been in exclusive possession of the land since the month of Joisto 1276 B.S., (May—June 1869) the plaintiff's claim, if any, was barred by lapse of time.

The Subordinate Judge decreed the suit, and held upon the authorities of *Krishna Gobind-Dhur v. Hari Churn Dhur* (1) and *Woomesh Chunder Goopto v. Raj Narain Roy* (2), that

* Appeal from Appellate Decree No. 2275 of 1885, against the decree of J. F. Stevens, Esq., Judge of Mymensingh, dated the 18th of August 1885, affirming the decree of Baboo Rajendra Coomar Bose, Subordinate Judge of that district, dated the 30th of March 1885.

(1) 1. L. R., 9 Calc., 367.

(2) 10 W. R., 15.